

**BEFORE THE  
DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

**Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages  
Notice No. 41**

**Comments of the Staff of the  
Bureau of Consumer Protection,  
the Bureau of Economics,  
and the Office of Policy Planning of the Federal Trade Commission**

September 26, 2005\*

---

\*These comments represent the views of the staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission. They are not necessarily the views of the Federal Trade Commission or any individual Commissioner. The Commission has, however, voted to authorize the staff to submit these comments.

## I. INTRODUCTION

The Alcohol and Tobacco Tax and Trade Bureau ("TTB") of the U.S. Department of Treasury has requested comments on an advance notice of proposed rulemaking ("ANPRM") with regard to labeling and advertising of beverage alcohol.<sup>1</sup> The ANPRM requests, *inter alia*, comments regarding whether TTB should require mandatory labeling about alcohol and nutrient content per serving;<sup>2</sup> what areas need further research before TTB can decide whether and how changes can be made;<sup>3</sup> whether labeling should include information about the amount of drinking considered to be "moderate" under the U.S. Dietary Guidelines;<sup>4</sup> and whether any new labeling requirements should apply equally to advertisements.<sup>5</sup>

The FTC has substantial experience challenging unfair or deceptive acts and practices related to alcohol advertising and labeling<sup>6</sup> as a violation of Section 5 of the Federal Trade Commission Act.<sup>7</sup> The FTC shares with TTB jurisdiction over the labeling and advertising of alcohol, and the two agencies often coordinate activities to provide consistent guidance regarding matters within their joint jurisdiction.

The FTC staff also has conducted extensive empirical research concerning the effect of advertising claims, including health and nutrient content claims for foods.<sup>8</sup> This research suggests that government regulations that require or allow marketers to provide such information to consumers may have a significant effect on the type and amount of health information they receive, which, in turn, affects the products they purchase. It also suggests that such regulations may facilitate competition among marketers based upon disclosed attributes, potentially leading to useful product innovations.

Drawing on its law enforcement experience and its research, FTC staff has filed comments with other agencies advocating policies regarding health claims and nutrient content claims that it believed would benefit consumers, including comments addressing such claims for beverage alcohol<sup>9</sup> and foods.<sup>10</sup> FTC staff appreciates the opportunity to provide views to the TTB as part of this rulemaking proceeding.

The FTC staff believes that TTB's regulations<sup>11</sup> should be amended to require that beverage alcohol labels disclose alcohol and nutrient content per serving, because such a change is likely to have beneficial effects on consumers and competition. Information on labels about the attributes of alcoholic beverages would help consumers select beverages consistent with their preferences, including making selections consistent with the recommendations of public health agencies. In addition, it would encourage manufacturers to compete based on the nutritional (e.g., calories, carbohydrates) attributes of their beverages.

Accordingly, in the absence of information demonstrating that disclosures would impose significant costs on marketers, FTC staff recommends that the TTB amend its rules to require that alcohol labels disclose:



- serving size,
  - number of servings per container; and,
  - for each serving,
- the fluid ounces of ethyl ("pure") alcohol,
  - calories,
  - fat and saturated fat (in grams), and
  - carbohydrates (in grams).

We also recommend that, before adopting a particular format for such label disclosures, TTB conduct empirical research to ensure that the disclosures are understandable and informative to ordinary consumers. FTC staff recommends against applying these disclosure requirements to advertising because the costs would likely exceed the benefits.

Marketers have expressed an interest in describing how the amount of alcohol in their beverages compares to government health guidelines regarding moderate consumption; however, expert sources appear to provide conflicting information about the quantity of alcohol in a standard "drink" as described in those guidelines. FTC staff recommends that TTB confer with public health agencies to resolve this uncertainty. We recommend that TTB thereafter allow marketers the option of making truthful, non-misleading representations comparing the amount of alcohol in a serving of their beverage to a standard drink or to dietary guideline recommendations.

## II. ALCOHOL CHARACTERISTICS AND EFFECTS

The Department of Health and Human Services and the United States Department of Agriculture recently issued guidelines ("2005 Dietary Guidelines") on what consumers should eat and drink.<sup>12</sup> The 2005 Dietary Guidelines state that the "consumption of alcohol can have beneficial or harmful effects depending on the amount consumed, age, and other characteristics of the person consuming the alcohol, and specifics of the situation."<sup>13</sup> According to the 2005 Dietary Guidelines, "heavy alcohol consumption" causes "increased risk of liver cirrhosis, hypertension, cancers of the upper gastrointestinal tract, injury, violence, and death."<sup>14</sup> Alcohol also varies significantly in calories per serving. The Guidelines also place a strong emphasis generally on the importance of limiting calorie and fat consumption.<sup>15</sup> As further discussed below, the Dietary Guidelines recommend that adults who drink beverage alcohol limit their consumption to "up to one drink per day for women and up to two drinks per day for men."

The Commission also has recognized the specific risks of injury to underage consumers who drink alcohol.<sup>16</sup> The FTC's 2003 Report on Alcohol Marketing and Advertising emphasized that "drinking by minors remains high." The Report further noted that "[t]he manner in which minors drink places them at risk of significant harm. Excessive drinking is associated with a variety of risky behaviors and injury, including drunk driving accidents, suicide, sexual assault, and high risk sexual activity."

The amount of alcohol in beverages varies widely. Many popular beverages – 12 ounces of regular beer containing 5% alcohol by volume (“ABV”), 5 ounces of wine containing 12% ABV, or 1.5 ounces of 80 proof distilled spirits – deliver 0.6 ounces of pure alcohol.<sup>17</sup> Numerous other popular beverages, however, contain more or less alcohol. Beers in the marketplace range from approximately 3.3% to 17% ABV,<sup>18</sup> thus delivering between 0.39 and 2 ounces of pure alcohol per serving. Wines range from 6% to 18% ABV,<sup>19</sup> *i.e.*, providing between 0.3 and 0.9 ounces of alcohol in a 5-ounce serving. Distilled spirits range from 15% to 75% ABV, *i.e.*, providing 0.22 to 1.1 ounces of alcohol per serving.<sup>20</sup>

Alcohol also varies significantly in calories per serving. Calories in a serving of beer range from 95 to 340;<sup>21</sup> in spirits, from 48 to 180;<sup>22</sup> and in wine, from 100 to 235.<sup>23</sup> Similarly, beverage alcohol varies significantly in terms of other nutrients, such as carbohydrates and fat. The limited data that are publicly available suggests that beers range from 5 to 22 grams of carbohydrates per serving;<sup>24</sup> spirits may contain between 0 and 18 grams of carbohydrates;<sup>25</sup> and wines may contain between 1 and 18 grams of carbohydrates.<sup>26</sup> In addition, while FTC staff is unaware of any beers or wines that contain fat, there are a number of distilled spirits products that contain fat from cream, milk, or coconut.<sup>27</sup>

### III. FTC STAFF RECOMMENDATIONS FOR LABEL DISCLOSURES

Beverage alcohol labels can play an important role in providing information to consumers. Consumers often will see beverage alcohol labels before they consume the product. Approximately 75% of alcohol is purchased by consumers for use “off premise,” *e.g.*, purchasing beer, wine, or spirits for consumption at home, and 25% is consumed “on premise,” *e.g.*, ordering a cocktail, beer, or wine at a restaurant. Because consumers purchasing beverage alcohol for consumption off-premises will have a chance to examine the label prior to purchase, the label may be an effective means of conveying important alcohol and nutrient content information to consumers.

Because alcohol and nutrients in beverage alcohol can affect health, information about these ingredients on beverage labels may help consumers make better-informed decisions. About 62% of American adults consume alcohol,<sup>28</sup> and most adults who consume beverage alcohol drink products in more than one of the three alcohol categories (beer, wine, and spirits).<sup>29</sup> Research shows that in many instances, consumer decisions are made at the point of purchase.<sup>30</sup> As a result, label disclosures about alcohol and nutrient content may assist consumers in choosing among categories and brands. For example, labels with calorie and alcohol content information could permit consumers to select a wine containing fewer calories or a distilled spirit containing less alcohol.

Empirical research suggests that disclosures about nutrient content on the Nutrition Facts Panel of food labels have assisted consumers in making better-informed choices among competing foods.<sup>31</sup> They also help consumers to comply with recommendations contained in the



U.S. Dietary Guidelines and other sources regarding calorie, fat, saturated fat, and other nutrient intake. As health consequences became a more important consideration for consumers, the mandated disclosures have given producers a powerful economic incentive to develop and market foods based on their nutritional attributes.

FTC staff believes that disclosure of alcohol and nutrient content information on beverage alcohol labels could have similar beneficial effects on consumers and competition. Such information would increase the ability of consumers to evaluate their actual alcohol, calorie, carbohydrate, and fat intake.<sup>32</sup> It would also increase the incentives for alcohol marketers to engage in product innovation.

Accordingly, FTC staff recommends that beverage alcohol label regulations be modified to require disclosure of the following information: serving size (in fluid ounces) and the number of servings per container; and, for each serving, the fluid ounces of pure alcohol (to the nearest tenth of an ounce), calories, fat (in grams), saturated fat (in grams); and carbohydrates (in grams).

In addition, FTC staff recommends that TTB mandate serving sizes for various beverages.<sup>33</sup> Establishing standard serving sizes will make it easier for consumers to compare the alcohol, calorie, carbohydrate, and fat content of beverage alternatives.<sup>34</sup> Further, standardized serving sizes would avoid the presentation of such information for atypical or contrived serving sizes.<sup>35</sup>

TTB also has requested comment on proposed formats for these disclosures.<sup>36</sup> FTC staff recommends that TTB adopt a standardized format, analogous to the "Nutrition Facts" labels on foods.<sup>37</sup> This format should mandate the order in which items appear and the language, including abbreviations, to be used. Use of this format will speed consumer familiarity with the disclosures and more readily enable consumers to compare alcohol and nutrient content of different beverages when making purchase decisions. Before adopting any particular format, however, TTB should conduct consumer research to ensure that it is understandable and informative to ordinary consumers in making purchasing decisions.

#### **IV. LABEL REFERENCES TO STANDARD DRINKS OR HEALTH GUIDELINES**

TTB also requests comments on various proposals designed to assist consumers in comparing their alcohol intake to the guidance of health authorities. The 2005 Dietary Guidelines caution consumers to drink "in moderation," defined as the consumption of:

up to one drink per day for women and up to two drinks per day for men. Twelve fluid ounces of regular beer, 5 fluid ounces of wine, or 1.5 fluid ounces of 80-proof distilled spirits count as one drink for purposes of explaining moderation.<sup>38</sup>

TTB requests comments on a proposal to permit or require that labels bear the statement, "U.S. Dietary Guidelines advice on moderate drinking: no more than two drinks per day for men, one



drink per day for women.”<sup>39</sup> Additionally, it requests comments on proposals to permit or require that labels compare the amount of alcohol in a serving of a beverage to a standard drink.<sup>40</sup>

Given the wide variety of alcohol levels in various beverages, however, consumers may not know what constitutes a “drink” or whether their consumption is “moderate.” Although some government health publications state that a standard drink contains 0.6 ounces of pure alcohol, others state that a standard drink contains 0.5 or 0.54 ounces of alcohol.<sup>41</sup> Researchers have noted that the lack of standard information about what constitutes a “drink” poses problems in evaluating alcohol intake, particularly for consumers who choose atypical beverages.<sup>42</sup> Thus, any statement about limits on alcohol intake must identify how much pure alcohol is contained in a “drink” or a “standard drink,” if it is to be useful to consumers.

FTC staff therefore recommends that TTB confer with the National Institute on Alcohol Abuse and Alcoholism (“NIAAA”) and USDA to establish the alcohol content in a standard “drink.” Once this issue is resolved, we recommend that TTB *permit* marketers who so choose to include truthful, non-misleading statements comparing the amount of alcohol in a serving of their product to a standard “drink” or to the 2005 Dietary Guidelines’ recommendations.

The FTC staff takes no position, however, on whether TTB should *mandate* such a disclosure on labels. FTC staff does not have sufficient information as to the costs and benefits of such disclosures to marketers, consumers, and others. However, based on information submitted to the agency during this rulemaking proceeding, including information from government health agencies, TTB may be able to determine whether the benefits from a mandated label disclosure outweigh its costs.<sup>43</sup>

## V. DISCLOSURES IN ADVERTISING

TTB also seeks comment on whether any new labeling requirements should apply equally to advertising.<sup>44</sup> FTC staff recommends that TTB not impose new labeling disclosure requirements equally to advertising. Advertising differs from labeling in important ways that make it likely that the costs of mandatory disclosure in advertisements would outweigh its benefits.

The food or beverage product label traditionally serves as a conduit for product information that a regulatory agency determines is important for consumers to receive. Within a confined physical space, the label is a vehicle for disclosure of a product’s objective characteristics. Labeling regulations may specify in considerable detail the language and other information that is to be presented and the relative prominence of one piece of information as compared to another.

In contrast, advertising is designed to provide consumers with a potentially wide variety of objective and subjective information about products.<sup>45</sup> This diverse focus increases the costs of mandated disclosure because there is no equivalent “back of the label” place for the required

information, although the costs would vary with the nature of the disclosure and the advertising format.<sup>46</sup> More importantly, it is the FTC staff's belief that disclosure of detailed health-related information – such as alcohol and nutrient content disclosures – as part of an advertisement with a fundamentally unrelated message is unlikely to be effective and, therefore, may provide little benefit for consumers.<sup>47</sup> As a result, FTC staff recommends that TTB not apply new labeling requirements equally to advertising<sup>48</sup>

## VI. CONCLUSION

The FTC staff believes that TTB's beverage alcohol label regulations should be modified to require disclosures regarding serving size and the number of servings per container, and, for each serving, the quantity of pure alcohol, calorie, fat, saturated fat, and carbohydrates. Disclosing such information is likely to benefit consumers and competition. We believe that the development and adoption of such requirements will lead to better-informed consumers who will be able to make choices based upon relevant attributes, and potentially result in useful product innovations. Any proposed label format should be subject to consumer research, prior to adoption, to ensure that the disclosure is understandable to the ordinary consumer.

FTC staff also recommends that TTB, in consultation with public health agencies, establish the alcohol content in a standard "drink." Once this amount has been established, TTB should permit marketers to make truthful, nondeceptive claims comparing the quantity of alcohol in their beverages to that standard or to the 2005 Dietary Guidelines' recommendation.

Respectfully submitted,



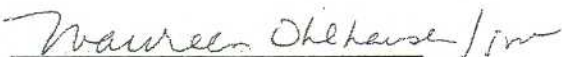
Lydia B. Parnes, Director

Mary K. Engle, Associate Director, Division of Advertising Practices

Thomas B. Pahl, Assistant Director, Division of Advertising Practices

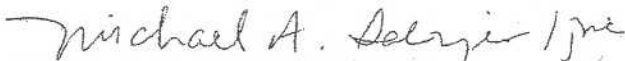
Janet M. Evans, Attorney, Division of Advertising Practices

Bureau of Consumer Protection



Maureen Ohlhausen, Director

Office of Policy Planning



Michael A. Salinger, Director

Joseph Mulholland, Economist

Bureau of Economics